

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

MICHAEL J. SMITH.

Case No. 3:20-cv-00325-CLB

Plaintiff,

**ORDER DENYING MOTION TO
REMAND AND GRANTING CROSS-
MOTION TO AFFIRM**

KILOLO KIJAKAZI,¹
Acting Commissioner of Social Security,

[ECF Nos. 19, 20]

Defendant.

This case involves the judicial review of an administrative action by the Commissioner of Social Security (“Commissioner”) denying Michael J. Smith’s (“Smith”) application for disability insurance benefits and supplemental security income pursuant to Titles II and XVI of the Social Security Act. Currently pending before the Court is Smith’s motion for reversal and/or remand, (ECF No. 19), and the Commissioner’s cross-motion to affirm and opposition, (ECF No. 20). Having reviewed the pleadings, transcripts, and the Administrative Record (“AR”), (ECF No. 15), the Court concludes that the Commissioner’s finding that Smith could perform other work that exists in significant numbers in the national economy was supported by substantial evidence. Therefore, the Court denies Smith’s motion for remand, (ECF No. 19), and grants the Commissioner’s cross-motion to affirm, (ECF No. 20).

I. STANDARDS OF REVIEW

A. Judicial Standard of Review

This court's review of administrative decisions in social security disability benefits cases is governed by 42 U.S.C. § 405(g). See *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002). Section 405(g) provides that "[a]ny individual, after any final decision of

¹ Kilolo Kijakazi is now the Acting Commissioner of Social Security and is automatically substituted as a party pursuant to Fed. R. Civ. P. 25(d).

1 the Commissioner of Social Security made after a hearing to which he was a party,
 2 irrespective of the amount in controversy, may obtain a review of such decision by a civil
 3 action . . . brought in the district court of the United States for the judicial district in which
 4 the plaintiff resides." The court may enter, "upon the pleadings and transcript of the record,
 5 a judgment affirming, modifying, or reversing the decision of the Commissioner of Social
 6 Security, with or without remanding the cause for a rehearing." *Id.*

7 The court must affirm an Administrative Law Judge's ("ALJ") determination if it is
 8 based on proper legal standards and the findings are supported by substantial evidence
 9 in the record. *Stout v. Comm'r Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006); see
 10 also 42 U.S.C. § 405(g) ("findings of the Commissioner of Social Security as to any fact,
 11 if supported by substantial evidence, shall be conclusive"). "Substantial evidence is more
 12 than a mere scintilla but less than a preponderance." *Bayliss v. Barnhart*, 427 F.3d 1211,
 13 1214 n.1 (9th Cir. 2005) (internal quotation marks and citation omitted). "It means such
 14 relevant evidence as a reasonable mind might accept as adequate to support a
 15 conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated*
 16 *Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)); see also *Webb v. Barnhart*, 433 F.3d
 17 683, 686 (9th Cir. 2005).

18 To determine whether substantial evidence exists, the court must look at the
 19 administrative record as a whole, weighing both the evidence that supports and
 20 undermines the ALJ's decision. *Orteza v. Shalala*, 50 F.3d 748, 749 (9th Cir. 1995)
 21 (citation omitted). Under the substantial evidence test, a court must uphold the
 22 Commissioner's findings if they are supported by inferences reasonably drawn from the
 23 record. *Batson v. Comm'r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004).
 24 "However, if evidence is susceptible of more than one rational interpretation, the decision
 25 of the ALJ must be upheld." *Orteza*, 50 F.3d at 749 (citation omitted). The ALJ alone is
 26 responsible for determining credibility and for resolving ambiguities. *Meanel v. Apfel*, 172
 27 F.3d 1111, 1113 (9th Cir. 1999).

28 It is incumbent on the ALJ to make specific findings so that the court does not

1 speculate as to the basis of the findings when determining if substantial evidence supports
2 the Commissioner's decision. The ALJ's findings should be as comprehensive and
3 analytical as feasible and, where appropriate, should include a statement of subordinate
4 factual foundations on which the ultimate factual conclusions are based, so that a
5 reviewing court may know the basis for the decision. See *Gonzalez v. Sullivan*, 914 F.2d
6 1197, 1200 (9th Cir. 1990).

7 **B. Standards Applicable to Disability Evaluation Process**

8 The individual seeking disability benefits bears the initial burden of proving
9 disability. *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir. 1995). To meet this burden, the
10 individual must demonstrate the "inability to engage in any substantial gainful activity by
11 reason of any medically determinable physical or mental impairment which can be
12 expected . . . to last for a continuous period of not less than 12 months." 42 U.S.C. §
13 423(d)(1)(A). More specifically, the individual must provide "specific medical evidence" in
14 support of their claim for disability. See 20 C.F.R. § 404.1514. If the individual establishes
15 an inability to perform their prior work, then the burden shifts to the Commissioner to show
16 that the individual can perform other substantial gainful work that exists in the national
17 economy. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir. 1998).

18 The first step requires the ALJ to determine whether the individual is currently
19 engaging in substantial gainful activity ("SGA"). 20 C.F.R. §§ 404.1520(b), 416.920(b).
20 SGA is defined as work activity that is both substantial and gainful; it involves doing
21 significant physical or mental activities, usually for pay or profit. 20 C.F.R. §§ 404.1572(a)-
22 (b), 416.972(a)-(b). If the individual is currently engaging in SGA, then a finding of not
23 disabled is made. If the individual is not engaging in SGA, then the analysis proceeds to
24 the second step.

25 The second step addresses whether the individual has a medically determinable
26 impairment that is severe or a combination of impairments that significantly limits the
27 individual from performing basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). An
28 impairment or combination of impairments is not severe when medical and other evidence

1 establish only a slight abnormality or a combination of slight abnormalities that would have
2 no more than a minimal effect on the individual's ability to work. 20 C.F.R. §§ 404.1521,
3 416.921; Social Security Rulings ("SSRs") 85-28 and 96-3p. If the individual does not have
4 a severe medically determinable impairment or combination of impairments, then a finding
5 of not disabled is made. If the individual has a severe medically determinable impairment
6 or combination of impairments, then the analysis proceeds to the third step.

7 The third step requires the ALJ to determine whether the individual's impairment or
8 combination of impairments meets or medically equals the criteria of an impairment listed
9 in 20 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §§ 404.1520(d), 404.1525,
10 404.1526, 416.920(d), 416.925, 416.926. If the individual's impairment or combination of
11 impairments meets or equals the criteria of a listing and meets the duration requirement
12 (20 C.F.R. §§ 404.1509, 416.909), then a finding of disabled is made. 20 C.F.R. §§
13 404.1520(h), 416.920(h). If the individual's impairment or combination of impairments
14 does not meet or equal the criteria of a listing or meet the duration requirement, then the
15 analysis proceeds to the next step.

16 Prior to considering step four, the ALJ must first determine the individual's residual
17 functional capacity ("RFC"). 20 C.F.R. §§ 404.1520(e), 416.920(e). The RFC is a function-
18 by-function assessment of the individual's ability to do physical and mental work-related
19 activities on a sustained basis despite limitations from impairments. SSR 96-8p. In making
20 this finding, the ALJ must consider all of the symptoms, including pain, and the extent to
21 which the symptoms can reasonably be accepted as consistent with the objective medical
22 evidence and other evidence. 20 C.F.R. §§ 404.1529 and 416.929; SSRs 96-4p, 96-7p.
23 To the extent that objective medical evidence does not substantiate statements about the
24 intensity, persistence, or functionally-limiting effects of pain or other symptoms, the ALJ
25 must make a finding on the credibility of the individual's statements based on a
26 consideration of the entire case record. The ALJ must also consider opinion evidence in
27 accordance with the requirements of 20 C.F.R. §§ 404.1527 and 416.927 and SSRs 96-
28 2p, 96-5p, 96-6p, and 06-3p.

1 After making the RFC determination, the ALJ must then turn to step four to
 2 determine whether the individual has the RFC to perform their past relevant work. 20
 3 C.F.R. §§ 404.1520(f), 416.920(f). Past relevant work means work performed either as the
 4 individual actually performed it or as it is generally performed in the national economy
 5 within the last 15 years or 15 years prior to the date that disability must be established. In
 6 addition, the work must have lasted long enough for the individual to learn the job and
 7 performed at SGA. 20 C.F.R. §§ 404.1560(b), 404.1565, 416.960(b), 416.965. If the
 8 individual has the RFC to perform their past work, then a finding of not disabled is made.
 9 If the individual is unable to perform any past relevant work or does not have any past
 10 relevant work, then the analysis proceeds to the fifth and final step.

11 The fifth and final step requires the ALJ to determine whether the individual is able
 12 to do any other work considering their RFC, age, education, and work experience. 20
 13 C.F.R. §§ 404.1520(g), 416.920(g). If the individual is able to do other work, then a finding
 14 of not disabled is made. Although the individual generally continues to bear the burden of
 15 proving disability at this step, a limited evidentiary burden shifts to the Commissioner. The
 16 Commissioner is responsible for providing evidence that demonstrates that other work
 17 exists in significant numbers in the national economy that the individual can do. *Lockwood*
 18 *v. Comm'r, Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010).

19 II. CASE BACKGROUND

20 A. Procedural History

21 Smith applied for disability insurance benefits ("DIB") and supplemental security
 22 income ("SSI") on October 20, 2016, and October 27, 2016, respectively, with an alleged
 23 disability onset date of October 1, 2016. (AR 274-281.) Smith's application was denied
 24 initially on February 17, 2017, and upon reconsideration on July 3, 2017. (AR 189-94, 197-
 25 207.) Smith subsequently requested an administrative hearing. (AR 208-209.)

26 On December 6, 2018, Smith and his attorney appeared at an in-person hearing
 27 before an ALJ. (AR 71-108.) An impartial vocational expert ("VE") and an impartial medical
 28 expert also appeared at the hearing by telephone. (*Id.*) The ALJ issued a written decision

1 on March 22, 2019, finding that Smith was not disabled because he could perform other
 2 work that exists in significant numbers in the national economy. (AR 25-38.) Smith
 3 appealed, and the Appeals Council denied review on April 2, 2020. (AR 1-6.) Accordingly,
 4 the ALJ's decision became the final decision of the Commissioner. Having exhausted all
 5 administrative remedies, Smith filed a complaint for judicial review on June 2, 2020. (ECF
 6 Nos. 1-1, 5.)

7 **B. ALJ's Decision**

8 In the written decision, the ALJ followed the five-step sequential evaluation process
 9 set forth in 20 C.F.R. §§ 404.1520 and 416.920. (AR 25-38.) Ultimately, the ALJ disagreed
 10 that Smith has been disabled from October 1, 2016, the alleged onset date, through the
 11 date of the decision. (AR 37.) The ALJ held, based on Smith's age, education, work
 12 experience, and RFC, that Smith could perform other work that exists in significant
 13 numbers in the national economy. (*Id.*)

14 In making this determination, the ALJ first determined that Smith meets the insured
 15 status requirements of the Social Security Act through December 31, 2018. (AR 29.) The
 16 ALJ then went to step one of the five-step sequential evaluation, where the ALJ found
 17 Smith had not engaged in substantial gainful activity since the alleged onset date of
 18 October 1, 2016. (*Id.*) At step two, the ALJ found Smith had the following severe
 19 impairments: vision loss, dysfunction major joints and osteoarthritis – bilateral feet,
 20 Achilles' tendinosis (left foot), bilateral knees with meniscus tear, degenerative disc
 21 disease, thoracic spine, multiple lipomas and open wound. (AR 29-30.) At step three, the
 22 ALJ found Smith did not have an impairment or combination of impairments that either
 23 met or medically equaled the severity of those impairments listed in 20 C.F.R. Part 404,
 24 Subpart P, Appx. 1; 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925,
 25 and 416.926. (AR 30-31.)

26 Next, the ALJ determined Smith has the RFC to perform light work as defined by
 27 20 C.F.R. §§ 404.1567(b) and 416.967(b) except:

28 [Smith] is able to occasionally climb stairs and ramps but never able to climb

1 ladders or scaffolds. He can occasionally balance, stoop, kneel, crouch, and
2 crawl. [Smith] would need to avoid concentrated exposure to extreme cold,
3 and moving dangerous machinery, and avoid all exposure to unprotected
heights. He should never drive a commercial vehicle.

4 (AR 31-36.)

5 The ALJ found Smith's medically determinable impairments could reasonably be
6 expected to cause some of the symptoms alleged; however, Smith's statements
7 concerning the intensity, persistence, and limiting effects of those symptoms were not
8 entirely consistent with the medical evidence and other evidence in the record. (AR 33.)
9 In reaching this conclusion, the ALJ reviewed and discussed the objective medical
10 evidence, Smith's treatment history, and Smith's demonstrated abilities and reported
11 activities. (AR 31-36.) The ALJ then determined that Smith is not capable of performing
12 any past relevant work as actually or generally performed. (AR 36.)

13 Relying on the testimony of the VE, the ALJ determined that Smith's age, education,
14 work experience, and RFC would allow her to perform other occupations existing in
15 significant numbers in the national economy, such as: pantry good maker, short order
16 cook, or caterer helper. (AR 37.) Accordingly, the ALJ held that Smith had not been under
17 a disability since the alleged onset date of October 1, 2016, through the date of the
18 decision, and denied Smith's claim. (AR 37.)

19 III. ISSUE

20 Smith seeks judicial review of the Commissioner's final decision denying DIB and
21 SSI under Titles II and XVI of the Social Security Act. (ECF No. 19.) Smith raises a single
22 issue for this Court's review: whether the ALJ properly rejected Smith's testimony
23 concerning pain, symptoms, and level of limitation. (*Id.* at 6-14.)

24 IV. DISCUSSION

25 A. The ALJ articulated clear and convincing reasons for rejecting Smith's 26 subjective testimony.

27 Smith argues that it is unclear how the medical evidence is inconsistent with Smith's
28 testimony as the ALJ's recitation of the medical evidence fails to accurately portray Smith's

1 overall health, conservative treatment was an insufficient reason for rejecting Smith's
2 testimony, and the ALJ improperly rejected Smith's testimony based on activities of daily
3 living. (ECF No. 19 at 6-14.)

4 By contrast, the Commissioner argues that the ALJ provided multiple valid reasons
5 for discounting Smith's testimony, namely that: (1) certain objective medical findings did
6 not support the extent of his allegations; (2) Smith alleged disabling back pain, but denied
7 back pain to his providers; (3) the conservative nature of his treatment was inconsistent
8 with the extent of his alleged limitations; and (4) Smith's activities illustrated that he had
9 greater functional abilities than alleged. (ECF No. 20 at 6-15.)

10 An ALJ engages in a two-step analysis to determine whether a claimant's testimony
11 regarding subjective pain or symptoms is credible. "First, the ALJ must determine whether
12 there is objective medical evidence of an underlying impairment which could reasonably
13 be expected to produce the pain or other symptoms alleged." *Molina v. Astrue*, 674 F.3d
14 1104, 1112 (9th Cir. 2012) (internal quotation marks omitted). "The claimant is not required
15 to show that her impairment could reasonably be expected to cause the severity of the
16 symptom she has alleged; she need only show that it could reasonably have caused some
17 degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal
18 quotation marks omitted).

19 Second, "[i]f the claimant meets the first test and there is no evidence of
20 malingering, the ALJ can only reject the claimant's testimony about the severity of the
21 symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the rejection."
22 *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter v. Astrue*, 504
23 F.3d 1028, 1036 (9th Cir. 2007)). "General findings are insufficient; rather, the ALJ must
24 identify what testimony is not credible and what evidence undermines the claimant's
25 complaints." *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
26 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) ("[T]he ALJ must make a credibility
27 determination with findings sufficiently specific to permit the court to conclude that the ALJ
28 did not arbitrarily discredit claimant's testimony.").

1 In making an adverse credibility determination, the ALJ may consider, *inter alia*, (1)
2 the claimant's reputation for truthfulness; (2) inconsistencies in the claimant's testimony
3 or between his testimony and his conduct; (3) the claimant's daily living activities; (4) the
4 claimant's work record; and (5) testimony from physicians or third parties concerning the
5 nature, severity, and effect of the claimant's condition. *Thomas*, 278 F.3d at 958-59.

6 A review of the record shows the ALJ provided specific, clear, and convincing
7 reasons for finding Smith's statements concerning the intensity, persistence, and limiting
8 effects of his symptoms less than credible.

9 **1. Objective Medical Evidence**

10 Subjective testimony cannot be rejected solely because it is not corroborated by
11 objective medical findings, but medical evidence is a relevant factor in determining the
12 severity of a claimant's impairments. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.
13 2001); *see also Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005).

14 The ALJ relied on objective medical evidence that supports the RFC rather than
15 Smith's allegations of pain. Although the ALJ cannot cherry pick objective medical
16 evidence from the record, they can consider contrary objective medical evidence in making
17 a credibility determination. Here, the ALJ provided a thorough summary of the medical
18 evidence in which he highlighted specific objective findings that support the assigned RFC.
19 (AR 31-36.) He also considered that Smith's treatment modalities have been effective at
20 relieving his pain and other symptoms. (*Id.*) Further, the ALJ found that Smith's treatment
21 was through conservative methods such as physical therapy and home exercise. (AR
22 753.) Thus, based on these findings, the ALJ assigned a reduced RFC with postural and
23 environmental limitations. Accordingly, the Court finds the ALJ provided clear and
24 convincing reasons for finding Smith not credible to the extent his testimony exceeds the
25 RFC.

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1 **2. Conservative Treatment and Inconsistent Statements Regarding**
2 **Back Pain**

3 “Evidence of ‘conservative treatment’ is sufficient to discount a claimant’s testimony
4 regarding severity of an impairment.” *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007)
5 (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (conservative treatment
6 “suggest[s] a lower level of both pain and functional limitation.”)); see also *Gutierrez v.*
7 *Commissioner of Social Sec. Admin.*, 671 Fed. Appx. 526 (9th Cir. 2016) (clear and
8 convincing reasons to discount claimant’s credibility included conservative treatment
9 involving physical therapy, weight loss, and medications). The ALJ can also infer that a
10 claimant’s symptoms are, “not as all-disabling as . . . reported.” *Tommasetti v. Astrue*, 533
11 F.3d 1035, 1039-40 (9th Cir. 2008) (finding a claimant’s favorable response to
12 conservative treatment undermined his “reports regarding the disabling nature of his
13 pain.”). However, “[a] claimant cannot be discredited for failing to pursue non-conservative
14 treatment options where none exists.” *LaPierre-Gutt v. Astrue*, 382 Fed. Appx. 662, 664
15 (9th Cir. 2010). Conservative treatment “is not a proper basis for rejecting the claimant’s
16 credibility where the claimant has a good reason for not seeking more aggressive
17 treatment.” *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008)
18 (citing *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007)).

19 Smith argues that he did not receive conservative treatment because he was
20 approved for surgery, but it had not yet occurred, and thus, this an insufficient reason for
21 rejecting his testimony. (ECF No. 19 at 12.) The ALJ found that Smith had treated certain
22 pain symptoms, specifically back pain, with conservative measures such as physical
23 therapy, though “he was apparently discharged because of ineffectiveness.” (AR 33, 388,
24 391, 394-95, 664, 788, 792, 814.) The ALJ also noted, that despite Smith’s allegations of
25 “always” having back pain, Smith occasionally denied back pain to his providers. (AR 33,
26 382, 388, 456, 502, 517, 541, 555, 664.) Further, Smith was instructed as to other
27 conservative treatment, such as home exercises to help with his left Achilles’ tendinosis,
28 but “he did not do them because he alleged pain.” (AR 33, 599-603.) The ALJ

1 acknowledged that Smith's providers had proposed surgeries, but still found that he
2 received conservative treatments, specifically as it related to his spine.

3 The ALJ's reliance on the conservative treatment and inconsistent statements
4 regarding back pain are free of error. *Hanes v. Colvin*, 651 Fed.Appx. 703, 705 (9th Cir.
5 2016) (unpublished) ("the ALJ supported his conclusion with evidence of [claimant's]
6 conservative treatment plan, which consisted primarily of minimal medication, limited
7 injections, physical therapy, and gentle exercise") (citing *Parra*, 481 F.3d at 751);
8 *Tommasetti*, 533 F.3d at 1039 (The ALJ may consider "prior inconsistent statements
9 concerning the symptoms.").

10 **3. Smith's Daily Activities**

11 An ALJ may discredit a claimant's testimony when he reports participation in
12 everyday activities indicating capacities that are transferable to a work setting. See *Molina*,
13 674 F.3d at 1112-13; 20 C.F.R. § 404.1529(c)(3)(i). Further, the inconsistency between a
14 claimant's alleged symptoms and his daily activities, is sufficient to support a finding that
15 a plaintiff was not entirely credible. See *Lingenfelter*, 504 F.3d at 1040 (in determining
16 credibility, an ALJ may consider "whether claimant engaged in daily activities inconsistent
17 with alleged symptoms"). Specifically, daily activities may be grounds for discrediting a
18 claimant's testimony when a claimant "is able to spend a substantial part of his day
19 engaged in pursuits involving the performance of physical functions that are transferrable
20 to a work setting." *Fair v. Brown*, 885 F.2d 597, 603 (9th Cir. 1989). Even when such
21 activities suggest some difficulty functioning, the ALJ may discredit a claimant's testimony
22 to the extent they contradict claims of a totally debilitating impairment. See *Turner*, 613
23 F.3d at 1225.

24 Here, the ALJ also found Smith less credible because the account of his daily
25 activities was inconsistent with his alleged limitations. (AR 33); see *Tommasetti*, 533 F.3d
26 at 1039 (inconsistency between a claimant's alleged symptoms and his daily activities may
27 be a clear and convincing reason to find a claimant less credible). Smith testified that he
28 has trouble walking without bumping into objects due to his vision problems, that he can

1 generally walk for 5-10 minutes, stand for 60 minutes, sit for 60 minutes, lift and carry 20
 2 pounds, and climb stairs to his second-floor apartment. (AR 32, 81-92.) He testified that
 3 he sometimes uses knee braces to help him walk, but he did not wear braces to the
 4 hearing as the braces make his ankles and legs swell. (*Id.*) He further testified that he still
 5 cooks at home but is reluctant to use knives. (*Id.*) Additionally, Smith reports that he can
 6 take care of his personal hygiene, do dishes, take out the trash, go grocery shopping, and
 7 drive. (AR 33, 81-92.) Based on these, and other findings, the ALJ determined Smith's
 8 subjective symptom testimony was inconsistent with his alleged impairments. (AR 31-36.)

9 Based on the above, the Court finds the ALJ provided "specific, clear and
 10 convincing" reasons supported by substantial evidence for discounting Smith's credibility
 11 as to his subjective limitations. See *Fair*, 885 F.2d at 604 ("Where, as here, the ALJ has
 12 made specific findings justifying a decision to disbelieve an allegation of excess pain, and
 13 those findings are supported by substantial evidence in the record, our role is not to
 14 second-guess that decision.").

15 **V. CONCLUSION**

16 Having reviewed the Administrative Record as a whole and weighing the evidence
 17 that supports and detracts from the Commissioner's conclusion, the Court finds that the
 18 ALJ's decision was supported by substantial evidence.

19 Accordingly, **IT IS THEREFORE ORDERED** that Smith's motion to remand (ECF
 20 No. 19) is **DENIED**, and the Commissioner's cross-motion to affirm (ECF No. 20) is
 21 **GRANTED**;

22 **IT IS FURTHER ORDERED** that the Clerk **ENTER JUDGMENT** and **CLOSE THIS**
 23 **CASE**.

24 **DATED:** February 3, 2022.

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UNITED STATES MAGISTRATE JUDGE
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